Newsletter of the Utah Prosecution Council

The PROSECUTOR

Director's Thoughts

UPC Changes

The Utah Prosecution Council met on January 10, 2014. During the meeting the Council elected Duchesne County Attorney Stephen Foote as Chair of the Council. Orem City Prosecutor Robert Church was elected as Chair-elect. Also, the county attorneys in UPC region II (Tooele, Summit, Wasatch, Utah, Juab and Millard counties) selected Wasatch County Scott Sweat to represent that region on UPC.

Many thanks to outgoing UPC Chair Barry Huntington. His term is up but he remains a member of the Council. Thanks also to David Brickey, whose term on the Council ended in January. David worked, and will continue to work very hard on a number of issues of import to prosecutors.

What's Up on the Hill

In addition to gunk in the air and winter fatigue, January also brings the legislature to town. People, including moi, make lots of disingenuous remarks about our legislature. We probably ought to be more grateful. I suspect all that hot air is at least a contributing factor to the fact that the inversion has almost always broken by the first week in March.

While most of us start thinking about the legislative session about the same time we break the last of the new year's resolutions we so rashly made after we watched the big ball drop, The SWAP Legislative Affairs Committee (SWAP-LAC) has been working in anticipation of the 2014 legislation since May of last year. SWAP-LAC just held its last pre-session meeting. Among the legislation discussed were:

DUI & Traffic

For as long as anyone can recall, our DUI standard has been "Impaired to a degree that makes the driver unable to safely operate a motor vehicle." For about that same length of time, the Arizona statute has required proof that the driver is "impaired by alcohol or drugs to the slightest degree." For decades we have waited until people can no longer drive properly or no longer walk a straight line before we arrest and prosecute them. Dozens of studies have shown that impairment of judgment and of ones ability to react properly in an emergency are effected at BA levels considerably lower than those that cause observable impairment under normal driving conditions. Rep. Lee Perry has been working with Ed Berkovich, UPC's Traffic Law Resource Prosecutor, to draft a bill that would bring the Arizona standard to Utah. This will be a SWAP bill. Not yet numbered.

Following last year's statement by the National Highway Traffic Safety Administration that people with a BA in excess of .05 are impaired to the point they should not be driving, there has been talk abut whether any legislator would run a .05 bill. Despite a fair amount of interest, no such bill has yet been filed for the 2014 session.

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In This Issue:

LEGAL BRIEFS

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SB 128 is another attempt to make seat belt violations a primary offense.

Theft Amendments

SB 13 will be another effort to amend our long standing "third conviction is a felony" provision in the theft statute. You may recall that last year's bill was defeated largely because of opposition from most of the county attorneys. This year's bill has been reviewed and approved by the county attorneys and has SWAP support. The bill:

• Changes the penalty from a felony to a class A misdemeanor for a person convicted of misdemeanor theft for a third or subsequent time in 10 years; except
• The penalty for a third theft conviction in 10 years becomes a third degree felony if one of the prior convictions was a class A misdemeanor;
• The penalty for a third theft conviction in 10 years becomes a third degree felony if the value of the property in the current case is more than $500 but less than $1,500;
• The penalty for any theft conviction is a third degree felony if the person has been previously convicted of felony theft.

Forcible Entry by Police

Sen. Stephenson recently made public a bill that would greatly restrict the circumstances under which law enforcement officers may forcibly enter a building. In addition to the very basic problem of possibly exposing cops to greater danger and increased opportunity for bad guys to destroy evidence, the bill's drafting has serious problems. SWAP-LAC and, I'm confident, the Law Enforcement Legislative Committee will make this bill a top priority. See SB 70.

Crimes Against a Person

HB 257 would modify the definition of "A Position of Special Trust" in 76-5-404.1, Aggravated Sexual Abuse of a Child. This was made necessary by a court decision last year. It has been the topic of a good deal of discussion in SWAP-LAC meetings. I believe it's about where we want it, but stay tuned.

HB 254 is entitled Human Trafficking Victim Amendments, but it amends 76-10-1302, Prostitution. The bill provides that a child is not subject to a delinquency proceeding for prostitution unless the child has been referred to DCFS on at least one prior occasion for an alleged act of prostitution. The bill was the subject of a heated discussion in SWAP-LAC, which produced no clear marching orders.

HB 65 and HB 71 were filed in response to so called "revenge porn" cases. Situations in which a person (usually a woman) has given nude and/or otherwise intimate photos to a boyfriend. After they break up the boyfriend then sends the photos to a porn site, often including the victim's name, address and phone number. Such conduct would become a 3rd degree felony under either bill.

Restitution

This is a big issue, and deservedly so. Studies show that less than 5% of restitution ordered by courts is ever paid. Like it or not, prosecutors must be major players in this effort.

HB 53 would enable the Juvenile Courts to retain jurisdiction of a case to monitor and enforce restitution beyond the time when the court would otherwise lose jurisdiction. SWAP supports it.

HB 248 would enact language providing that:
"(3) A victim may seek restitution from the court through:
(a) individual counsel;
(b) a representative designated in writing; or
(c) the prosecutor's office."
This bill also generated a lengthy and heated discussion among the members of SWAP-LAC. There are concerns that the language may lead to the victim becoming a third party in a criminal case and/or to non-lawyers trying to represent the victim. There is also concern about what it means by saying the victim may seek restitution "through the prosecutor's office." While we certainly should work to help gain restitution, we are not the victim's attorney.

Another restitution bill, as yet to be made public, would, among other things, enable cash bail posted by or on behalf of a defendant to be seized for restitution if the defendant is convicted. That is based upon an Oregon law that has produced good results.

Other Stuff

There are at least two weapons bills. HB 276 is a sort of newer version of previous years' attempts to pass legislation providing that the mere carrying of a gun "in a holster" or "encased" is not, by itself, disorderly conduct. Sounds good in the abstract, but what do you do with the guy who walks into a bank with a gun, or what do you tell moms who call about a couple of scary looking, gun packing guys hanging around on the street where their kids are playing. The problems in application are what have killed it in past years.

HB 268 exempts archery equipment from the definition of "dangerous weapon" when being used for hunting. Wasn't that why the Dukes of Hazzard use bows and arrow?

HB 68 is in response to the idiots who pushed over a hoodoo in Goblin Valley last summer. It attempts to clarify the elements of an offense and the way to measure damages.

SB 12 would raise the age at which one can legally smoke in Utah to 21.

SB 112 addresses game fowl fighting. I include this just so I can quote Chad Platt's summary. "This bird won't die. Has the same problems from years ago when it was run."

Stay Tuned

This is by no means an exhaustive list of all the 2014 bills that will be of

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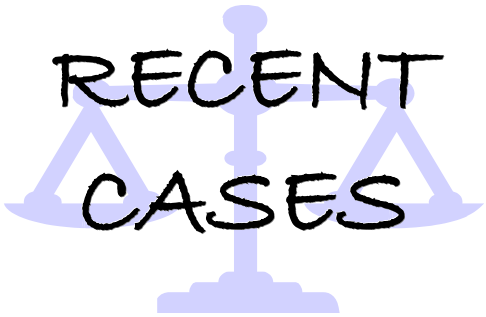
interest or concern to prosecutors and law enforcement. Please pay attention to what's happening on the hill. If you have specific experience in regard to the topic of any bill, your thoughts are most welcome. Also, if you have a good relationship with your legislator, or, for that matter, any one else's legislator, drop me a note so we can call upon you if a friendly talk with that legislator may be helpful. Just don't call with any great ideas for legislation that needs to be passed. That train, for 2014, left the station weeks ago.

SWAP-LAC will be meeting every Friday during the session. Paul Boyden, as always, will be spending about 80 hours per week on the hill. By the time it's over he will have aged 10 years.

The Spring Conference on April 10-11 will include the annual legislative update, so mark your calendars and plan to be there.



Utah Supreme Court

Introduction Of 404(b) Evidence Not Ineffective Assistance Of Counsel
S.B. consulted Dr. Bedell about chronic knee and ankle pain. During the initial visit Dr. Bedell fondled S.B.'s breasts for several minutes, made inappropriate comments and asked what kind of narcotic she wanted pr escribed. On later visits, defendant made inappropriate comments and pressed his erect penis into her leg. Eventually defendant terminated S.B. as a patient. Eventually, S.B. was arrested for abusing prescription medication and was sentenced to jail.

In jail S.B. was speaking to another inmate and found out that Dr. Bedell was being charged with sexual assault. S.B. came forward with the information about his abuse of her. Logan City Police investigated and questioned S.B. while making no promises to her about a reduction in her sentence or charges against her. S.B. testified at trial and her credibility and the credibility of the police's investigation were strongly questioned by defense counsel. Eventually, defendant's conviction was overturned by the Utah Court of Appeals for ineffective assistance of counsel because his attorney allowed the investigating detective's testimony on redirect examination about other allegations of sexual misconduct against defendant, which was 404(b) evidence.

The Utah Supreme Court held "because there was a legitimate strategic decision for Dr. Bedell's counsel to use the 404(b) evidence and his use of that evidence allowed the State to similarly make use of the evidence, his ineffective assistance of counsel claim must fail." The supreme court affirmed the conviction. *State v. Bedell*, 2013 UT 73

***Little* Test To Determine Liability**
Alexander Kerr shattered his kneecap when he fell after tripping on an uneven section of sidewalk maintained by Salt Lake City. The day before Kerr fell the city presented an estimate of how much it would cost to repair the sidewalk to a business owner, Mr. Hwang, and told Hwang that he would be responsible for the cost of repairing the sidewalk. Kerr sued the city and obtained a judgment in his favor. Salt Lake City appealed the city was entitled to discretionary function immunity along with other issues.

The Utah Supreme Court held the *Little* test is used to determine whether or not the City qualified for discretionary function immunity. The *Little* test is stated as: Does the challenged act, omission, or decision necessarily involve a basic governmental policy, program, or objective? (2) Is the questioned act, omission, or decision essential to the realization or accomplishment of that policy, program, or objective as opposed to one which would not change the course or direction of the policy, program, or objective? (3) Does the act, omission, or decision require the exercise of basic policy evaluation, judgment, and expertise on the part of the governmental agency involved? (4) Does the governmental agency involved possess the requisite constitutional, statutory, or lawful authority and duty to do or make the challenged act, omission, or decision?

The supreme court held the district court answered the first and fourth questions affirmatively, but the city failed to qualify for discretionary function immunity on the second and third questions. The supreme court affirmed the judgment. *Kerr v. Salt Lake City*, 2013 UT 75

Rezoning Decisions Subject to Referendum
Capital Assets Financial Services requested the City of Saratoga Springs rezone 12 acres of land from low density to medium density so that Capital Assets could develop

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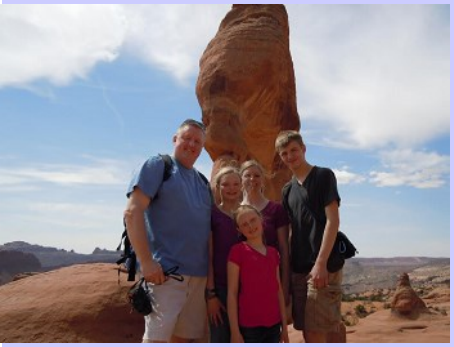
Case Summary Index

PROSECUTOR PROFILE



Michael Postma
Deputy District Attorney
Salt Lake County

Law School: University of Utah

Favorite Food: BBQ Ribs

Favorite Book : The Short Stories of Earnest Hemingway

Favorite Band: Boston

Favorite TV series: Diners, Drive-ins, and Dives (aka Triple D)

Favorite Hobby: Raising his kids

Mike has worked for the District Attorney's Officer for over 21 years. He started as a law clerk and never left. His first job was a newspaper delivery boy. He then worked in a grocery store from the age of 16 until he started law school. As a child Mike wanted to be a doctor, until one day in shop class. The class watched a safety film that showed someone who got a splinter in his eye from not wearing safety glasses. He knew right then he needed to look for a different career.

After his bad experience in shop class he had to find another career path and always enjoyed government and politics, so he kept law school in the back of my mind. Friends and family were not surprised by the decision to go to law school. Mike said, "I think that they knew that law school was a good fit for me. I don't know if that's good or bad."

When he started college he had pretty well decided that he wanted to be a prosecutor. He took classes that he thought would help in law school. He forced himself to read and write as much as possible during his undergraduate degree. During law school he took all of the courses that were available in criminal law. The trial advocacy class was the most helpful class. He started working in the District Attorney's Office as a law clerk during my last year of law school and have stayed with the office ever since.

Mike's mission president, Pat Brian, was a former prosecutor in Orange County California and helped Mike decide on his career. Mike says, "He was a very positive influence on my life. He was supportive of me going to law school and becoming a prosecutor. He became a District Court Judge in the Third District. I would frequently go to his court during law school to talk with him and just to watch court. After law school I was able to appear in his court several times as a prosecutor."

One of Mike's most challenging experiences as a prosecutor was certifying a 14 year-old juvenile to stand trial as an adult for Murder. He is currently serving a life sentence in prison. One of the most rewarding experiences Mike has had as a prosecutor was helping prosecute a serial rapist, Azlan Marchet. He helped try three rape cases against Mr. Marchet, which had been previously convicted on another rape case. Some good 404(b) case law has come out of the Marchet prosecutions, as well 4 consecutive life sentences. Mike feels the most rewarding aspect of his job is knowing that he is fighting the good fight. He says, "A prosecutor can do good for so many. The community, the victims and even the defendants."

Much of Mike's career has been spent in the less traditional areas of the office. He spent a significant amount of time in the Screening Division, the Juvenile Division and our Early Case Resolution Court Division. Mike says, "These areas are not necessarily what you think of when you think of a prosecutor. However, they are critical to the functioning of the office and provided opportunities that cannot be gained in any other way. It has provided opportunities to really think about what we are doing as prosecutors and why we do it. " He was able to help in the formation of the Third District Court's Early Case Resolution Court. He helped develop the court for a year and then have worked in and supervised the court for the last two and a half years. The court tries to identify cases early in the process that can be settled quickly. The have been able to settle and sentence a significant percentage of our cases within 30 day of the cases being filed.

Mike met his wife, Trudy, on a blind date to watch a Ute basketball game. They have three kids and are currently in between pets.

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townhomes on the land. The City approved the request and passed an ordinance allowing it, but a group of citizens petitioned to reverse the ordinance. After obtaining the required signatures, the group submitted the petition to the City and requested that the issue be placed on the ballot as a referendum. The city recorder determined that the petition complied with the requirements of Utah Code section 20A-7-601 and agreed to place it on the ballot.

Capital Assets filed a complaint against the City requesting a declaratory judgment that the referendum challenged an action of the city council made through its administrative (and not legislative) power. Capital Assets did not name the citizens' group as a party or serve it with process and the citizens did not intervene, even though they had actual notice. The district court ruled in favor of Capital Assets, declaring that the site-specific zoning at issue was administrative and thus not subject to referendum.

The Utah Supreme Court took the case to answer whether site-specific rezoning is legislative action subject to referendum. The Supreme Court held that site-specific rezoning of property is a legislative matter and subject to referendum because it creates a generally applicable law and calls for the broad weighing of all relevant public policy considerations. *Krejci v. Saratoga Springs*, 2013 UT 74

Consent Is Necessary For Forfeiture Of Right To Enter Home

Defendant was arrested and removed from his home in 2010. He, Mrs. Machan and two sons had been living there together, but after defendant was removed from the home his wife obtained a restraining order that prohibited him from seeing his children or going to the home for 150 days. Mrs. Machan removed all of his belongings from the home and gave them to defendant's sister. Mrs. Machan filed for divorce shortly after defendant's arrest.

Shortly after the restraining order expired defendant telephoned Mrs. Machan to say goodbye, which she thought he meant he was changing his residence again. However, when she returned home with her two sons the door was barricaded from the inside. The older son looked through the door and could see defendant inside the home holding a .22 caliber rifle. Defendant called out to Mrs. Machan to come inside, but the son told her to run because defendant had a gun. The wife, one son, and a friend ran to a truck to leave. Defendant knocked out a window and pointed the rifle at them, but the older son had ran around back gotten in the home and punched defendant. Defendant was arrested and charged with aggravated burglary, aggravated assault, and domestic violence in the presence of a child. At the bindover hearing the magistrate found there was insufficient evidence that defendant had relinquished his right to enter the home and the state could not prove the unlawful entry element of aggravated burglary.

The Utah Supreme Court held because consent is a necessary requirement for any nonjudicial forfeiture of a spouse's right to enter the homestead defendant had to show or verbally consent of relinquishment of the right to enter the home. Here the supreme court held defendant did not show any voluntarily relinquishment of his right because he was arrested and removed from the home and did not voluntarily take any actions to convey to Mrs. Machan he had consented to his removal from the home. The Supreme Court upheld the magistrate judge's decision. *State v. Machan*, 2013 UT 72

Utah Court of Appeals

Bolstering Minor's Testimony Harmless Error

Defendant met the victim's mother (Mother) and her five boys while staying at a motel in Salt Lake City. They quickly became friends and the family visited defendant at his home in Vernal. Soon defendant asked the mother to move in with him and Mother agreed. Defendant was especially close to B.M, a four-year old boy. Defendant informed Mother that he was on the sex offender registry for abusing his own daughter when she was young, but claimed it was because of his alcohol abuse. Mother checked with defendant's daughter and felt okay living with defendant.

Eventually B.M. informed Mother of several disturbing incidents of sexual

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contact between defendant and B.M. when they were alone. Defendant had excuses for why he had touched B.M.'s penis or why B.M. had seen him watching child pornography. Then one day Mother left B.M. with defendant by himself overnight and mother could not contact defendant the next day. When she finally retrieved B.M. it was apparent defendant had molested him.

Defendant was charged with three counts of aggravate sexual abuse of a child. At trial, defendant's daughter was allowed to testify about her sexual abuse by defendant. Defendant was convicted of all three counts. Defendant appealed making many claims including the district court committed plain error by allowing testimony that bolstered B.M.'s testimony and that his convictions should have been reversed under the doctrine of cumulative error.

The Utah Court of Appeals held it was error to allow the detective to testify that B.M.'s statements seemed "genuine" and not to have been coached. The appellate court also held, "Under the cumulative error doctrine, we will reverse only if the cumulative effect of the several errors undermines our confidence that a fair trial was had." Here, the appellate court held that while the district court allowed two errors, both were harmless and so the conviction was upheld. *State v. Bragg*, 2013 UT App 282

Appellate Court Upheld Conviction On Testimony Of Officer

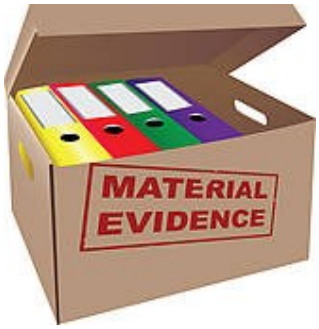
Defendant appealed her conviction for assaulting a police officer and interfering with an arrest claiming there was insufficient evidence to support the jury's verdict. The Utah Court of Appeals held that there was sufficient evidence for the jury to find all the required elements of the crimes charged. The testimony of a witness and the responding officers contradicted defendant's testimony and was consistent with all of the evidence.

Defendant also argued that the officers were not acting within the scope of their lawful authority because they used excessive force to arrest her and that she was therefore entitled to defend herself. The appellate court held testimony of the officers was different from defendant's and the jury believed the officers' and not the defendant. The conviction was affirmed. *Salt Lake City v. Christensen*, 2013 UT App 283

Evidence Must Be On Record For Appellate Court To Rule On

M.V. and her family moved into a two bedroom home with defendant in 2008. Defendant used one bedroom while M.V. and her sisters used the other, and M.V.'s mother slept on the couch. M.V. and defendant used drugs together. Eventually they would drive to Salt Lake to buy cocaine, drive home and use it in defendant's room. M.V. claimed defendant and she used cocaine in defendant's room late into the night and that when M.V. laid down to sleep defendant raped her. She said this happened four times. Defendant was convicted of four counts of rape and four counts of distribution of a controlled substance in a drug free zone.

Defendant appealed claiming ineffective assistance of counsel because his attorney failed to introduce



evidence that would have impeached the victim's testimony, did not interview potential witnesses, and opened the door to damaging impeachment evidence.

Defendant claimed his counsel failed to include evidence such as photo's of M.V. showing no track marks on her arms, a hair follicle drug test showing she tested negative for cocaine use, and a DCFS report showing M.V.'s denial of any sexual abuse. The Court of Appeals held that because defendant failed to include the evidence the court was not required to remand the case based on only the defendant's allegation of facts. The court of appeals held that given the uncertainty surrounding this evidence, they could not say there was "no reasonable basis" supporting the decision to leave it out. The court held because none of the exculpatory evidence or testimony was on the record, the court could not rule that defendant's counsel should have used the evidence or testimony. *State v. Curtis*, 2013 UT App 287

Independent Source Doctrine Applied Correctly

Police received a tip that defendant was selling high-grade marijuana from an apartment. The informant told police to cover the peephole so that the occupants of the apartment would open the door. The Weber Morgan Narcotics Strike Force went to the apartment to investigate and could smell burnt marijuana. The officers knocked and

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In Memory
R. Don Brown

Utah's prosecutorial community was saddened to learn of the sudden and unexpected passing of long time prosecutor and public attorney, R. Don Brown. Don had been a member of our community for longer than all but a very few of us can remember. He will be missed. Don passed on Sunday, December 29, 2013, due to complications from an illness. He is survived by his wife Daphne, and by children Danielle and Christopher. Our condolences go out to them.

A 1974 University of Utah Law graduate, Don was 64 years old. Beginning in 1978, Don served as Sevier County Attorney for 28 years. In 2006, when he opted not to seek reelection, Don was the most senior county attorney in the state in years in office. Since 2007, Don had been a prosecutor for the Utah Attorney General's Drug Prosecution Unit. That unit prosecutes serious drug cases in both state and federal courts.

Current Sevier County Attorney, Dale Eyre, who worked as Don's deputy for a number of years, said Don built a well-earned reputation as one of the toughest prosecutors in the state. "I inherited so much from him. He's always in our conversations. Ask any cop who's worked here in the past 30 years and they'll have a Don story," Dale said.

Emery County Attorney David Blackwell sent the following memories of Don. "I met Don in 1987, as the new public defender for Sevier County. We had a rocky start. Frankly, I thought he was possibly the orneriest human being I had ever met. Through the next few years, however, I came to appreciate and admire Don. He was tough and smart, he worked hard and I soon learned to appreciate his wry sense of humor. I even started to like him and looked forward to negotiating sessions. Our children became friends and I learned he was a devoted father and husband. He took a lot of heat in the press when he negotiated his salary to $60,000.00 per year, which at the time, was more than the governor was paid. When I chided him about the raise, his response was, 'Well, I'm worth more than the governor!' Don was more than a colleague, he was my friend. He never took advantage of that young public defender. He was always honest in an unvarnished way that is rare and under-appreciated. He showed me what a good prosecutor should be. Over the years I have quoted him often. 'No one said it would be sweet,' he would tell me after a negotiation that had not gone as well as I thought it should. 'Oh hell, there's another place I can't eat!,' when I told him my client got a job. And, my personal favorite, when I would see him occasionally and ask how he was doing: 'Not worth a damn!' Rest in peace my friend. You will be missed."

When not at work, Don loved the outdoors. His home in Monroe was less than 30 minutes from Fish Lake and from the mountains on either side of the Sevier Valley. Mark Nash, Director of Utah Prosecution Council, recalled a visit with Don one September. Conversation quickly moved away from legal topics to his latest elk hunt. Don's description of a big bull as it came in, snorting, bugling and tearing up the brush in response to Don's bugle call, enabled the listeners to not only picture the scene, but to almost hear and smell it.

Happy hunting, Don.

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covered the peephole. The occupants did not open the door until the officers had knocked multiple times. When the door was opened the officer asked if they could search the apartment, the occupants responded that they wanted a lawyer. The officers performed a safety sweep of the house, arrested the occupants, and then stepped outside to write the affidavit for a warrant. While writing the affidavit two people arrived to buy drugs. The police detained the two buyers and included it in the affidavit.

Once the warrant was obtained the police searched the apartment and found five bags of marijuana, drug paraphernalia, and a handgun. Defendant moved to suppress the evidence the officers obtained during the initial warrantless entry and during the later warrant search. The district court agreed that the entry was without lawful consent, but found that would have granted the warrant without the evidence found after entry. The district court denied the motion to suppress and defendant entered a no-contest plea to two charges. On appeal defendant claimed that by covering the peephole the police illegally coerced defendant into opening the door, that the warrant should not have been granted, and that the all the evidence should have been excluded.

The Utah Court of Appeals held the police did not act illegally or coerce defendant into opening the door by covering the peephole. The court held that defendant was aware that someone wanted entry to the apartment and that they were concealing their identity and defendant still opened the door. The court also held, "The district court properly ruled that the tainted evidence did not affect the officers' decision to seek the warrant or the magistrate's decision to issue it… therefore… the trial court correctly applied the independent-source doctrine." The appellate court affirmed the denial of defendant's motion to suppress. *State v. Hoffmann*, 2013 UT App 290

Warrant Affidavit With Typo Upheld

On September 20, 2006 Agent David White of the Utah Attorney General's Internet Crimes Against Children taskforce, used a computer program to access a peer-to-peer file sharing network. He found a particular IP address that had shared files known to contain child pornography. The Agent then requested a search warrant, but the affidavit had the wrong date listed for when the Agent observed the activity on the sharing network. The agent did not notice it, but explained at trial that he had made a typo on the date.

The agent located the owner of the home associated with the IP address and a search warrant was issued for the home of defendant. Sheriff's went to the golf course where defendant was playing golf, informed him of the search warrant, handcuffed him and drove back to his home in custody. Officers informed defendant of his Miranda rights and he waived them. On the drive officers asked him if he had ever downloaded child pornography and he answered that he had accidently downloaded some, but deleted it. The officers searched the home, seized two computers for later analysis and obtained a second warrant to search the computers. Officers found five videos depicting minors.

Defendant moved to suppress the statements he made to officers, but the motion was denied. Defendant appealed arguing the search warrant was invalid. The Utah Court of Appeals held, the affidavit contained a substantial basis for the trial court to determine that the reference to September 26 was a typographical error and that the affidavit, read as a whole, presented a fair probability that evidence of child pornography would be found by searching Mitchell's computer. *State v. Mitchell*, 2013 UT App 289

Sufficient Evidence To Convict and Violate Plea In Abeyance

Defendant was given a plea in abeyance agreement for assault with a domestic violence enhancement and agreed to commit no new violations of the law. Defendant came to the home of an acquaintance uninvited. The woman opened the door yelled at him to leave, while pointing a finger at him. Defendant grabbed her finger, bent it backwards, then grabbed her hair and yanked her to the ground. Defendant pulled a chunk of hair out of the victim's head and her finger was badly sprained. At trial, testimony was given by both defense and the government about the incident and defendant was convicted.

Defendant appealed his conviction of assault with a domestic violence enhancement following the revocation of his plea in abeyance. Defendant claimed the district court erred in finding a new violation of the law was a breach of his plea in abeyance agreement. Defendant claimed there was insufficient evidence to prove he violated the law. The Utah Court of Appeals held defendant engaged in conduct that violated the plea in abeyance and the determination of that by the district court was not an abuse of discretion. The appellate court affirmed the conviction. *Salt Lake City v. Northern*, 2013 UT App 299

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Court Inappropriately Weighed Evidence Of Counsel's Communication With Client

Defendant was convicted of seven counts of aggravated sexual abuse of a child in 2007. He challenged his conviction claiming ineffective assistance of counsel because he attorney failed to call a memory expert at trial. That appeal was denied and his conviction affirmed. Defendant then sued his former attorneys for legal malpractice based on the same theory. The district court granted summary judgment in favor of defendant's former attorneys.

Defendant then appealed the summary judgment claiming the court should not have determined that defendant admitted the facts set forth in the attorneys' motion when he did not expressly deny them, and in any case, those facts ,were not relevant or material to defendant's claims. Second, the court ,inappropriately glossed over the distinction' between legal malpractice and ineffective assistance of counsel and incorrectly held that an unsuccessful ineffective assistance claim precludes a later claim for legal malpractice on the same issues. Finally, there were genuine issues of material fact about whether the attorneys adequately communicated and advised defendant regarding the State's plea offers, and the court inappropriately weighed this evidence.

The Utah Court of Appeals held the defendant failed to properly brief the court about his attorney's failure to present a memory expert at trial. The appellate court also held the district court inappropriately weighed the conflicting evidence concerning whether the attorney's appropriately communicated the State's plea offers to defendant. The court reversed and remanded on the claim that the district court inappropriately weighed the conflicting evidence. *Willey v. Bugden*, 2013 UT App 297

Tenth Circuit Court of Appeals

Defendant Liable For Full Amount Of Loan and Loss

Defendant ran a real estate scheme in which she falsified documents to obtain properties to which she rented and sought to sell. She and her partner eventually owned and sold properties. They sold the properties to make a profit, but also inflated prices by having fake contracting companies perform services. Defendant was charged and convicted of multiple counts of fraud. At sentencing defendant was given a sentenced based on the loss, which "exceeded more than $2,500,000, but less than $7,000,000." Defendant claimed that this sentence was unfair because "there was no evidence that it was reasonably foreseeable to her that "downstream lenders would suffer losses." However, the district court found the loss to be reasonable and chose to impose a below-guidelines sentence of 60 months incarceration and a restitution amount of $2,408,142.37.

On appeal, defendant asserted the district court erred in calculating the amount of loss. Defendant argued that if the professionals in the real estate business could not foresee the loss on the properties she had bought, then it could not have been foreseeable to her either. Defendant also claimed she could not have known that she would be responsible for the full amount of the loan, instead of the lesser amount due.

The U.S. Court of Appeals for the Tenth Circuit held the reasonably foreseeable pecuniary harm resulting from defendant's fraud includes "the full amount of unpaid principal on the fraudulently obtained loan [s] because defendant, by fraudulently misrepresenting key information, including her job and income, "cause[d] [the] banks [at issue] to assume a risk of default," and "the loss of the unpaid principal [on each loan][wa]s an eminently foreseeable consequence of [her] fraudulent conduct." The Circuit Court affirmed the convictions. *United States v. Crowe*, 2013 BL 317901, 10th Cir., No. 12-1405, 11/18/13

Ambiguous Meaning Of Statute Required Lenity

Defendant robbed a bank in Albuquerque, New Mexico. As he fled the scene he led police on a chase in a minivan. During the chase defendant lost control of the minivan and crashed into another car, killing two women. Defendant was charged with two counts of killing a person while attempting to avoid apprehension for a bank robbery and convicted of both counts. Defendant claimed that charging him twice violated double jeopardy.

The statute defendant was charged with states that whoever, in attempting to avoid apprehension for bank robbery, "kills any person" will be punished by death or life imprisonment. The U.S. Court of Appeals for the Tenth Circuit held, "Although there is no controlling case law interpreting what unit of prosecution is meant by the "any person"

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language of § 2113(e), the Supreme Court repeatedly has found similar language sufficiently ambiguous as to require lenity." The Circuit Court held, "that 'any person' as used in § 2113(e) could be interpreted either in the singular or plural, making it sufficiently ambiguous as to require lenity" and vacated one of the sentences. *United States v. Jackson*, 2013 BL 331989, 10th Cir., No. 12-2169, 11/26/13

Other Circuits/ States

Ban On Domestic Violence Violators Possession Of Guns Upheld

Defendant was convicted of a misdemeanor domestic violence charge in 1996. Under State and federal law he was prohibited from owning, purchasing, receiving, or possessing any firearm. The state law barred defendant from possessing a firearms for ten years after his conviction, but the federal statute, § 922(g)(9), barred him for life. § 922(g)(9). In 2009 defendant applied to purchase a firearm from a San Diego gun dealer. He replied "no" to whether he had ever been convicted of crime of domestic violence. Defendant was denied the gun because the background check showed his 1996 conviction. The FBI received information about his attempt to purchase a firearm. During their investigation the FBI found defendant had possessed and shot rifles while on "border patrols" near the U.S.-Mexico border. The FBI also found that another complaint for domestic violence had be filed with local law enforcement and that the victim claimed defendant had firearms in the home. The FBI searched the home and found four firearms and hundreds of rounds of ammunition.

Defendant was charged with knowingly possessing firearms in violation of § 922(g)(9) and making a false statement in the acquisition of a firearm in violation of 18 U.S.C. § 924(a)(1)(A). Defendant moved to dismiss knowingly possessing a firearm in violation of § 922(g)(9) claiming the statute violated his Second Amendment rights. The district court denied his motion finding § 922(g)(9) "is a presumptively lawful prohibition and represents an exemption from the right to bear arms under the Second Amendment as articulated in [District of Columbia v. Heller, 554 U.S. 570 (2008)]."

Defendant appealed claiming the statute is an unconstitutional ban on his fundamental right to bear arms and unconstitutional as applied to him because his civil rights had been restored under state law. The U.S. Court of Appeals for the Ninth Circuit held defendant's civil rights were never restricted and therefore could not have been restored. The Appellate Court also held that intermediate scrutiny applied to the defendant's claim and that § 922(g)(9) is constitutional on its face. The Appellate Court held § 922(g)(9) advanced an important government interest in preventing domestic gun violence and the statute is substantially related to that interest because domestic violence misdemeanants are likely to use guns to commit domestic violence felonies later. *United States v. Chovan*, 2013 BL 317907, 9th Cir., No. 11-50107, 11/18/13

Law Preventing Defendant From Possessing Gun While Released On Bond Upheld

Washington State law prohibits firearms possession by someone released on bond after a judge has found probable cause to believe that person has committed a serious offense. Defendant was released on bond after a trial court judge found probable cause to believe he had shot someone. Then while out on bond he was arrested with a handgun and an AR-15 rifle. Defendant was convicted of unlawful

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possession of a firearm.

Defendant claimed the statute violated his rights to bear arms under federal and state constitutions. The Washington Supreme Court held the limited, temporary ban on possession of firearms while released on bail pending proceedings for a serious offense did not violate defendant's right to bear arms under either the state or federal constitution. The Supreme Court held that when applying intermediate scrutiny the law was constitutional because it was limited to only persons who have been charged with any of an enumerated list of "serious offenses" and was limited in time because it only affected a person while on bond. *State v. Jorgensen*, 2013 BL 326097, Wash., No. 87448-4, 11/21/13

Spousal Privilege Did Not Cover Abuse Or Threat

Donald Kasavich was found dead in his trailer. Defendant's wife, Nilsen, had turned to Kasavich to help her because defendant was beating her. Defendant moved to exclude evidence that defendant had beaten her and invoked martial privilege to prevent Nilsen from testifying. The district court denied the motion and allowed Nilsen to testify. At trial, Nilsen testified that defendant had beaten her, forced her into the truck, and drove to the victim's trailer. Outside the trailer defendant told her that he would kill the victim and her, then cut off the victim's dick and stick it in her mouth. Defendant was convicted and appealed claiming Nilsen's testimony should have been excluded. The appellate court held the record clearly showed Nilsen's testimony contributed to the defendant being found guilty and therefore reversed and remanded for a new trial.

The Illinois Supreme Court held neither spouse "may testify as to any communication or admission made by either of them to the other or as to any conversation between them during marriage, except in cases in which either is charged with an offense against the person or property of the other." The supreme court held, "Two elements must be met before a communication between spouses falls within the privilege. First, the communication must be an utterance or other expression intended to convey a message. Second, the message must be intended by the communicating spouse to be confidential in that it was conveyed in reliance on the confidence of the marital relationship."

Here, the supreme court held, "The [domestic violence] that occurred in April 2004, including defendant's conduct at that time, would not fall within the marital privilege" because they were nonverbal conduct and physical acts of cruelty or abuse. The supreme court also held the threat defendant issued to Nilsen was admissible because it was not a private exchanged made out of the absolute confidence induced by the marital relationship. The supreme court reversed the appellate court's judgment and the case was remanded.
People v. Trzeciak, Ill., No. 114491, 11/15/13

Threats Not Protected By 1st Amendment

Defendant sent an anonymous email to a radio host speaking about her desire to "take our country back from the illegal aliens, jews, muslims, and illuminati who are running the show" and threatening "to teach government employees at a school [or post office] about the Second Amendment." Defendant then called the radio station and said that the email was sent by her husband and that he was mentally ill and planning to open fire at a nearby school.

As a result of the email and phone call the police were dispatched to schools and other public buildings to secure them. The officers had to work overtime and this cost the police department thousands of dollars. There was no shooting and law enforcement eventually identified defendant as the person who sent he email and called the station. Defendant pled guilty for knowingly transmitting a threatening communication and appealed claiming the First Amendment protected her speech.

The U.S. Court of Appeals for the Eleventh Circuit held true threats are an area of speech not protected by the First Amendment. Further, the Circuit Court held defendant knowingly transmitting the threat makes the act criminal—not the specific intent to carry it out or the specific intent to cause fear in another and when the Government shows that "a reasonable person would perceive the threat as real," a true threat may be punished and "any concern about the risk of unduly chilling protected speech has been answered." The Circuit Court affirmed the conviction.
United States v. Martinez, 11th Cir., No. 11-13295, 11/27/13

Houseguest Could Not Consent To Search

DEA agents arrived at defendant's home suspecting drug trafficking. The agents did not know much about the home, who lived there, or the layout of the home. The agents were there to do a "knock and talk" investigation. They knocked on the door and spoke to the man who answered it. Agents could see a man holding a shoe box and woman holding a baby behind the man who answered. The agents explained they were from the DEA and asked if they could come in and search the home. The

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man at the door said they could and neither of the other occupants said otherwise.

The agents swept the house for safety reasons and they began to search. One agent went back to the master bedroom, found the shoe box the man was holding and discovered a white powdery substance in it. The agent then went through an interior door in the master bedroom and entered the garage. In the garage the agent found a Gucci bag and cash on the seat of the car. When speaking to the occupants the agents found out that the man who answered the door was a houseguest and was only visiting for a short time. The agents then took the owner of the home into a back bedroom and told him he should consent to a search and presented a form for him to sign. After he signed it he showed them a secret compartment in one of the cars which contained a large amount of methamphetamines.

Defendant moved to suppress the evidence found during the search, but the district court denied the motion. On appeal, defendant claimed the guest did not have the right to consent to the search of the home. The U.S. Court of Appeals for the Ninth Circuit held, "It was not objectively reasonable for the Agents to conclude that the man at the front door had authority to consent to a search of the master bedroom and bathroom." The Circuit Court also held, "It was not objectively reasonable for the Agents to conclude that the man at the front door had authority to consent to a search of the area beyond the door inside the master bedroom." The Circuit Court reversed the conviction and instructed the district court to grant the motion to suppress.
United States v. Arreguin, 2013 BL 326173, 9th Cir., No. 12-50484, 11/22/13

In Certain Cases Government Bears Ultimate Burden of Persuasion
Defendant plead guilty to a single count of conspiracy to distribute methamphetamine. At sentencing defendant sought to qualify for 18 U.S.C. § 3553(f) which would have reduced his "base offense" level by two levels. This reduction would have resulted in two-and-a-half years less of jail time. Defendant did not qualify for this reduction because of a prior DUI conviction. However, defendant claimed that when he plead guilty to the prior DUI charge he was not properly informed of his right to counsel, and did not waive his right to counsel, and therefore the plea cannot be used to enhance his current sentence.

The State argued defendant had the burden of production and the burden of persuasion in challenging the validity of his prior plea. The U.S. Court of Appeals for the District of Columbia held "in cases where the defendant alleges that a prior conviction or plea was secured in violation of the right to counsel, once the defendant has produced objective evidence sufficient to support a reasonable inference that this right to counsel was not validly waived the government has the ultimate burden of persuasion. The case was remanded to determine if defendant did in fact present evidence to objectively support his claim that he did not waive right to counsel.
United States v. Martinez-Cruz, D.C. Cir., No. 12-3050, 12/3/13

Warrant Required For Seizure of Employee's Laptop
Ruck (Employee) was on felony probation for the crime of forgery and was employed by MLDC Government Services Corp. (Employer). Employer knew the terms and conditions of employee's probation, which required employee not leave the State without written consent of his probation officer and that he consent to a search of his person, vehicle, residence, and property. Employer provided employee with a laptop to use wherever he desired, including on business trips and at his home.

Two probation officers went to employee's home to inquire about his recent attempt to purchase a firearm, which was prohibited by his felon status. The officers noticed a backpack and asked employee if it was his. He responded yes and the officer searched the backpack, finding airline tickets and the employer-provided laptop. The officer seized the laptop and asked employee what the password was. Employee provided the password and the officer left with the laptop to search it later. Employer objected to the seizure, the search of the laptop, and the disclosure of the data on the laptop.

The Idaho Supreme Court held that the seizure of the laptop was unconstitutional. While the officer's had the right to search employee's person, car, and residence and employee may have gave officers consent to search the laptop, the employer was the owner of the laptop and had the right to revoke any consent allegedly given by Employee. The supreme court held the state cannot search the laptop without a warrant issued based on judicial determination that there is probable cause to believe that evidence of Employee's probation violation is contained in the laptop.
State v. Ruck, 2013 BL 331995, Idaho, No. 39830-2012, 11/26/13

Payments Required For Scheme Not A Separate Crime
Defendant ran a Ponzi scheme from 2007 to 2009. He collected money and promised great returns, but really he was faking payouts and interest statements and then taking the money for himself. Defendant was convicted on one count of securities fraud, one count of wire fraud, and two counts of money laundering. Defendant appealed claiming the trial court should have granted his motion for judgment of acquittal on his money-laundering convictions because the Ponzi schemes did not involve proceeds of unlawful activity.

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The U.S. Court of Appeals for the Fourth Circuit held, "Because defendant's Ponzi scheme depended on periodic payments to investors, these payments constituted essential expenses of his criminal enterprise Punishing defendant separately for these payments therefore raises the same merger problem identified in *Santos*. For these reasons, while we affirm defendant's two fraud convictions, we must reverse his two money-laundering convictions, vacate his sentence, and remand the case." *United States v. Simmons*, 2013 BL 342919, 4th Cir., No. 12-4469, 12/11/13

Broad Search Warrant Upheld Because Affidavit Matched Crimes

Defendant had a scheme where he would fraudulently obtain free computer parts from several computer companies. He would begin by contacting a computer company via telephone or online chat session, claiming that he needed a replacement part for a defective computer component that was under warranty. As proof, Kuc would provide the company with a serial number or service tag that belonged to a real piece of computer equipment under warranty. The company would then mail Kuc a free replacement part with the expectation that he would return the defective part upon receipt, but in most instances, Kuc wouldn't because he didn't have the actual part. He would then sell the parts online. To trick the companies from recognizing the scheme defendant had multiple addresses, which he would spell differently enough to avoid detection.

Eventually the police investigated and applied for and received a search warrant. The warrant authorized the seizure of: All records, in whatever form, and tangible objects that constituted evidence, fruits, and instrumentalities of violations of 18 U.S.C. §§ 1343 (wire fraud), 2314 (interstate transportation of stolen property), 2315 (storage and sale of stolen property in interstate commerce), and 2 (aiding and abetting), including, without limitation: [list of twenty-three categories of items].

Defendant moved to suppress the evidence seized from his home claiming the warrant violated the particularity requirement of the fourth amendment. The motion was denied and defendant appealed claiming the warrant contained broad language and provided effectively no limitations on the scope of the search.

The U.S. Court of Appeals held, a warrant must be read in its entirety to determine if it is invalid. Here, the court held the overly broad clause defendant challenged was actually linked to the first paragraph by a transitional phrase and therefore tracks the particular crimes he committed and the companies he defrauded. The court held the denial of defendant's motion was proper and remanded the case. *United States v. Kuc*, 2013 BL 341474, 1st Cir., No. 12-2496, 12/10/13

Interview Suppressed After Moment Of Coercion

Defendant was an Iraqi who came to the U.S. after helping the U.S. military as a translator. His family had been tortured and killed and he was given asylum and an alias. Defendant was accused of participating in a sexual assault and brought into the police station for questioning. He was read his Miranda rights and spoke with the detective for almost an hour before being put in cell for "lying." The officer then threatened that he would be sent back to Iraq and then the detective showed defendant his true identity. Another officer threatened that the more defendant lied the more time in jail he would receive when convicted. Defendant moved to suppress the interview claiming the statements were coerced.

The Supreme Court of Colorado held, "Our examination of the videotape reveals that defendant began to change his story between minutes forty-two and fifty-four, but these statements were not coerced and are admissible. They resulted from the interrogator's technique of ingratiating himself with defendant. While the tone of the interrogation was becoming more accusatory, the police conduct during that time period did not cross the line into coercion." However, the supreme court continued, "Viewing the videotape between minute fifty and fifty-four reveals that the interrogator markedly switched his tactics. [The interrogator threatened deportation, violence, and longer jail time.] The interrogator's invocation of violence renders all statements defendant made after minute fifty-four involuntary and inadmissible. Whether or not defendant made incriminating statements prior to minute fifty-four does not affect our conclusion that the entirety of defendant's statement after the fifty-four minute point was coerced, contained incriminating information, and was involuntary under the totality of the circumstances." The court affirmed the suppression of the interview from minute fifty-four on. *People v. Ramadon*, Colo., No. 13SA22, 12/9/13

Government Bears Burden Of Showing Documents Were Not Testimonial

Defendant was indicted with one count of illegal reentry after deportation. Defendant's defense was that the government could not prove beyond a reasonable doubt that he did not derive citizenship through his mother, a US citizen. The government introduced a sworn affidavit of the defendant's grandmother stating the date defendant's mother lived in the U.S., the birthplaces of her grandchildren, and the facts behind the falsification of defendant's documents. The affidavit was created in the fraud investigation into one of defendant's relatives.

At trial, defendant objected to the admission of the affidavit. The affidavit was admitted and defendant was convicted. On appeal, defendant claimed the

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admission of the affidavit violated his Sixth Amendment right of the confrontation clause. The U.S. Court of Appeals for the Fifth Circuit held, the affidavit was testimonial because the government failed to establish that the affidavit was not created for the primary purpose of providing evidence for a later criminal trial. The Appellate Court held the admission of the affidavit did violate the confrontation clause rights of defendant and reversed the conviction. This decision is distinguished from Williams v. Illinois, 2012 BL 15019191 CrL 357 (U.S. 2012).
United States v. Duron-Caldera, 5th Cir., No. 12-50738, 12/16/13

Exceptions Didn't Apply To Warrantless Search

Cathleen Carr reported a suspicious hole in the wall at her apartment to the police. When officer's arrived she told them she had been away for some time. The officer said she would return later to investigate further because the neighbor was not home. The next day the officer returned with another officer to investigate, found a bullet lodged in the carpet, and decided to investigate the apartment where the bullet hole came from. They got a key from the front office and called the tenet, but when they had not heard back from the tenet they entered the apartment. They went to the bedroom where the bullet hole was located and it was locked. They forced their way in and found firearms and ammunition in plain view. They then spoke to defendant over the phone three different times in which they revealed they had found the guns and knew his status as a convicted felon and defendant admitted they were his firearms.

Defendant was charged with possession of a firearm by a convicted felon. Defendant moved to suppress the evidence that was found in his apartment, but the motion was denied and defendant was convicted. On appeal, defendant argued the officer's warrantless entry violated his Fourth Amendment rights. The government argued the entries into defendant's home were justified by the emergency aid exception and a protective sweep. Both justifications rested on the fact that a bullet had come from defendant's apartment into the apartment next to him.
The U.S. Court of Appeals for the Eleventh Circuit held that the officer's entry was illegal because the emergency aid exception did not apply because the officer's had no evidence that someone was in danger and in need of immediate aid. The court also held that because officer's initial entry was illegal they could not justify the protective sweep of the entry into the locked bedroom. The conviction was vacated and the case remanded.
United States v. Timmann, 11th Cir., No. 11-15832, 12/18/13

Forfeiture By Wrongdoing Allowed Hearsay Statements Admitted

In February 2011, Inekia Gentles told police her boyfriend, defendant, had choked her and beaten her several times that day. The State filed an information in connection with the assault. In March 2011 a prosecutor called Gentles to ask her to testify at defendant's trial for the February assault. Defendant overheard the conversation and told her to deny the assault. Gentles refused to testify. During the next two weeks defendant assaulted Gentles many times, even beating her with a belt. He refused to let her leave the apartment for two weeks. She eventually escaped to a nearby hospital.
While at the hospital a police officer interviewed her and she told him the details of what had been happening. When an officer contacted her a few days later she said she didn't want to press charges and that she was leaving the state the next morning.

At trial, the court allowed Gentles' out-of-court statements to the police officers about her assault to be admitted into evidence. Defendant argues on appeal that the trial court erred by admitting the out-of-court statements because they violate the Sixth Amendment's Confrontation Clause.

The Texas Appellate Court held, "Under the doctrine of forfeiture by wrongdoing, however, a defendant may not assert a confrontation right if his deliberate wrongdoing resulted in the unavailability of the declarant as a witness." The appellate court also held, the lower court "reasonably could infer from the evidence presented that defendant's second assault of Gentles was deliberately designed to intimidate her to keep her from testifying." The appellate court held the trial court did not abuse its discretion in admitting Gentles out-of-court statements under the doctrine of forfeiture by wrongdoing and affirmed the judgment.
Tarley v. State, TEX. R. APP. P. 47.2(b), No. 01-11-00463-CR, 12/19/13

Calendar

UTAH PROSECUTION COUNCIL AND OTHER LOCAL CLE TRAININGS

February 27-28	SEX CRIMES CONFERENCE *Specialized training for prosecutors and investigators*	Miller Conf Center Sandy, UT
April 10-11	SPRING CONFERENCE *Legislative and case law updates, civility/professionalism and more*	Sheraton Hotel Salt Lake City, UT
June 18-20	UTAH PROSECUTORIAL ASSISTANTS ASSN. ANNUAL CONFERENCE *Training for non-attorney staff in prosecutor offices*	Location TBA Wasatch Front
July 31 - August 1	UTAH MUNICIPAL PROSECUTORS ASSN SUMMER CONFERENCE *Training for city prosecutors and others who carry a misdemeanor case load*	Crystal Inn Cedar City, UT
August 18-22	BASIC PROSECUTOR COURSE *Trial advocacy and substantive legal instruction for new prosecutors*	University Inn Logan, UT
September 10-12	FALL PROSECUTORS TRAINING CONFERENCE *The annual CLE and idea sharing event for all Utah prosecutors*	Courtyard by Marriott St George, UT
October 15-17	GOVERNMENT CIVIL PRACTICE CONFERENCE *Training designed specifically for civil side attorneys from counties and cities*	Zion Park Inn Springdale, UT
November	ADVANCED TRIAL SKILLS COURSE *For felony prosecutors with 3+ years of prosecution experience*	Location TBA Salt Lake Valley

NATIONAL CRIMINAL JUSTICE ACADEMY

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March 10-14	TRIAL ADVOCACY I Summary Agenda Application *Hands on trial advocacy training for prosecutors with 2-3 years experience*	Salt Lake City, UT
May 12-16	TRIAL ADVOCACY I Summary Agenda Application *Hands on trial advocacy training for prosecutors with 2-3 years experience*	Salt Lake City, UT
June 9-13	TRIAL ADVOCACY I Summary Agenda Application *Hands on trial advocacy training for prosecutors with 2-3 years experience*	Salt Lake City, UT
July 7-11	TRIAL ADVOCACY I Summary Agenda Application *Hands on trial advocacy training for prosecutors with 2-3 years experience*	Salt Lake City, UT

Calendar

NATIONAL DISTRICT ATTORNEYS ASSOCIATION COURSES* AND OTHER NATIONAL CLE CONFERENCES

February 24-28	PROSECUTING HOMICIDE CASES Summary Agenda Registration *Fine tune investigative techniques and enhance your trial skills and your strategic planning*	San Francisco, CA
April 1-4	EQUAL JUSTICE FOR CHILDREN Summary Agenda Registration *This course is designed for those beginning a career as a child abuse professional*	Grand Rapids, MI
May 19-23	childPROOF (application link forthcoming) *Advanced Trial Advocacy for Child Abuse Prosecutors. There will be no attendance fee for this course. Only 30 prosecutors will be selected to attend.*	Washington, DC
June 16-25	CAREER PROSECUTOR COURSE Flyer (registration link forthcoming) *NDAA's flagship course for those who have committed to prosecution as a career*	San Diego, CA
June 23-27	INVESTIGATION & PROSECUTION OF CHILD PHYSICAL ABUSE & FATALITIES (Registration link forthcoming)	Baltimore, MD
June 23-27	UNSAFE HAVENS I (registration link forthcoming) *Investigation and Prosecution of Technology-Facilitated Child Sexual Exploitation. No registration fee for this course, which will be taught at AOL headquarters campus.*	Dulles, VA
November	UNSAFE HAVENS II (registration link forthcoming) *Advanced Trial Advocacy for Prosecution of Technology Facilitated Crimes Against Children. No registration fee for this course. The course is by application and only 30 prosecutors will be selected to attend.*	Dulles, VA

* For a course description, click on the "Summary" link after the course title. If an agenda has been posted there will also be an "Agenda" link. Registration for all NDAA courses is now on-line. To register for a course, click on the "Register" link. If there are no links, that information has yet to be posted by NDAA.